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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1054

PORT AUTHORITY TRANS-HUDSON CORPORATION,
Petitioner,

v.

HUDSON RAPID TUBES CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONER'S REPLY BRIEF

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The brief submitted by Hudson Rapid Tubes (HRT) opposing the certiorari petition of Port Authority Trans-Hudson (PATH) reduces itself to this: Although the compact clause of the Constitution expressly authorizes the States, with the consent of Congress, to solve regional problems by means of interstate Compacts, the ultimate and sole responsibility for the construction, application, enforcement and validity of such agreements lies with the State courts and not with this Court. Fortunately for the future utilization of interstate Compacts, *Delaware River Joint Toll Bridge Commission* v. *Colburn,* 310 U. S. 419, and *Dyer* v. *Sims,* 341 U. S. 22, are clear holdings to the contrary.

1. In Point I of its brief, HRT argues that this case, unlike *Colburn,* presents no question of Compact interpretation and, consequently, this Court has no jurisdiction.

However, Point III of its brief itself proves the insubstantiality of HRT's argument in Point I since it contends that PATH's interpretation (not to mention Judge Burke's[1]) renders the Compact provisions here involved unconstitutional, *i.e.*, the legislatures of New York and New Jersey could not validly require the judiciary to apply the constitutional standards in effect in 1962 and the then existing judicial interpretation of the principle of just compensation which, under the circumstances of this case, mandate an award of liquidation value ($3.5 million).

Thus HRT argues on the one hand that there are no Compact provisions to construe and on the other that if the Compact provisions are construed in accordance with what Judge Burke and PATH maintain are their meaning, they are unconstitutional.

This latter contention not only admits the existence of a substantial Compact construction question within the meaning of *Colburn* but it also requires this Court to hold that just as the "Supreme Court of the Nation" had the power and duty to ascertain for itself the validity and enforceability of the Compact provisions involved in *Sims*, it has the power and duty to ascertain for itself the validity and enforceability of the Compact provisions involved here.

2. HRT compounds its error when it relies upon conflict of laws cases[2] based on the Constitution's full faith

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[1] Judge Burke, in his dissenting opinion in the Court of Appeals, construed the terms of the interstate Compact here involved as giving PATH a right "to have applied . . . the law *as it existed* under settled principles heretofore followed in this State, not as it has just been drastically changed" (A-23, Emphasis, Judge Burke's) and that the Compact should "be read as . . . barring the sort of judicial amendment of our State's Constitution indulged in here today." (A-23)

[2] *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining Co.*, 243 U. S. 93, cited in HRT's brief at pp. 8, 11 and 15 and *Johnson* v. *New York Life Insurance Co.*, 187 U. S. 491, cited in HRT's brief at pp. 8 and 15.

and credit clause to answer PATH's contention that this Court has the power, under the compact clause, to correct what we assert is the New York Court of Appeals' misinterpretation of New Jersey law in valuing the 65% of the railroad property located in New Jersey.

HRT's reliance on conflict of laws cases points up the fact that it has no answer to our claim that the compact clause provides a sound jurisdictional foundation for this Court to make an independent determination here of what constitutes New Jersey condemnation law. HRT ignores the holdings of the decisions of this Court mandating the conclusion that in compact clause cases an error in the application of State decisional law in enforcing or construing a Compact's terms gives this Court jurisdiction.

The decision in *Colburn* clearly established this Court's power to review by certiorari questions of Compact construction even when it meant holding that the New Jersey courts had misapplied Pennsylvania law and therefore misconstrued the Compact. Contrary to HRT's argument here that this Court cannot reexamine the New York Court's interpretation of New Jersey law, this Court in *Colburn* itself, because of the Compact, carefully reviewed and interpreted the Pennsylvania law.

And in *Sims* this Court, relying upon *Colburn* for its jurisdiction, held that it could review a State court's construction of State law in the course of enforcing the terms of an interstate Compact. Writing for this Court, Mr. Justice Frankfurter there said that it is the function and duty of the Supreme Court "to examine determinations of law by State courts in the limited field where a compact brings in issue the rights of other States" (341 U. S. at 28) and "that the fact the compact questions reach us on a writ of certiorari rather than by way of an original action brought by a State does not affect the power of this Court." (*Id.* at 30)

WHEREFORE, PATH's petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 22, 1968

PROOF OF SERVICE

I, JOSEPH LESSER, a member of the Bar of the Supreme Court of the United States, and an attorney in the office of SIDNEY GOLDSTEIN, attorney for the Petitioner, hereby certify that on the 22nd day of March, 1968, I served three copies of the foregoing brief on the Respondent Hudson Rapid Tubes Corporation by mailing said copies in a duly addressed envelope with first class postage pre-paid to:

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/s/ JOSEPH LESSER

Joseph Lesser